IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Appeal No.408-SB of 1995
Date of Decision: 25.4.2007

Dhara and another.

..... Appellants.

Versus

State of Haryana.

..... Respondent.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

....

Present: Shri Sudhir Sharma, Advocate for the appellants.

Shri S.K.Hooda, Senior D.A.G., Haryana for the State.

....

Mahesh Grover,J.

This is an appeal directed against judgment dated 4.7.1995 recorded by the Additional Sessions Judge, Faridabad (hereinafter referred to as `the trial Court') in the case registered vide F.I.R.No.213 dated 6.6.1992 under Sections 307, 34 of the I.P.C., Police Station, City Ballabgarh, pursuant to which the appellants were sent up to face trial for having committed the offences punishable under the aforesaid provisions.

Briefly stated, the prosecution case is that the aforesaid F.I.R. was lodged in relation to the occurrence which took place on 5.6.1992 in which appellant no.2-Suraj son of Kishan Singh is said to have caught hold

of Abhay Singh (since deceased), while appellant no.1-Dhara caused two stab blows to him with a knife in his chest and abdomen. The genesis of the dispute was a quarrel which took place between the deceased and the appellants a few days prior to the occurrence.

The police, after investigation, had submitted challan under Section 173 of the Cr.P.C. against the appellants and they were ultimately charged for having committed an offence punishable under Section 307 read with Section 34 of the I.P.C.

The prosecution examined a number of witnesses to establish the guilt of the appellants which included the evidence of the doctors who appeared as PW1 and PW2. Abhay Singh, injured, could not be examined as he died a natural death during the course of trial. PW8-Vinay Kumar Tyagi, the author of the F.I.R. and an eye witness, was also examined. Rajesh, another eye witness, also stepped into the witness box as PW9.

In their statements recorded under Section 313 of the Cr.P.C., both the appellants pleaded innocence and false implication.

The trial Court, however, did not accept the defence of the appellants and found that they were guilty of the charge framed against them. Accordingly, a conviction under Section 307 read with Section 34 of the I.P.C. was recorded and the appellants were sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

Aggrieved against the conviction and sentence as aforesaid, the appellants have preferred the present appeal.

At the out-set, the only contention raised by the learned counsel

for the appellants is that during the pendency of the appeal, the parties had effected a compromise and an affidavit of the father of the deceased-Abhay Singh is on record testifying to the factum of compromise. That apart, it was contended that the appellants were students in the age group of 18 to 19 years and the deceased-Abhay Singh was also a student. The appeal is of the year 1995, whereas the occurrence is of the year 1992 and no fruitful purpose would be served by sending the appellants to jail to serve the remaining part of their sentence. He accordingly prayed that the sentence of the appellants be reduced to the already undergone by them.

The aforesaid prayer has been opposed by the learned counsel for the State, who contended that the injuries caused to Abhay Singh with a knife were unprovoked and both the appellants had actively participated in the commission of offence which has been established to the hilt by cogent evidence on record. There is, thus, no occasion to take any lenient view of the matter. The factum of appellant no.2 being a student was also denied and it was stated that he was employed as helper. His age was, however, not controverted.

I have heard the learned counsel for the parties at some length and have anxiously considered the rival contentions.

A perusal of the record shows that the injuries caused to Abhay Singh were largely unprovoked and there was active and violent participation of both the appellants. The medical opinion of the doctors categorically established that the injuries were dangerous to life. The relevant portion of the statement of PW2-Dr.Dinesh Singla, who medically examined Abhay Singh, reads as follows:-

“On examination I found that the general conditon of the

injured was not satisfactory. He was looking anxious. He was looking pale and there was no cyanosis. His pulse was 84 and BP was 130/70 mmhg.

There was bilateral equal air entry in the chest and there was sharp incised wound on left side of chest which was of the size of 1.5 cm.

The Ist and Iind heart sounds were normal. There was rigidity and tenderness over whole of the abdomen.

There was lacerated wound on left side of abdomen. It was of the size 2.5 cm. X 2.5 cm. It was on hypochondrium. Part of intestine called omentum in medical parlance was protruding out.

Both the injuries were caused with a sharp weapon in my opinion."

PW12-Dr. N.K.Pandey testified that the injuries sustained by Abhay Singh could have been caused by a sharp edged weapon, like a knife which was shown to him and was recovered from the appellants.

There is, thus, no escape from the conclusion that the appellants had caused injuries to Abhay Singh. It is, therefore, difficult to find any fault with the impugned judgment. Accordingly, the conviction so recorded by the trial Court is affirmed.

Coming to the question of sentence, the circumstances of the case present an irony of sorts. The injured died a natural death during the course of trial as a result of which probably meaningfulness of the present proceedings was lost for the family of the deceased and which might have prompted them to come to some sort of settlement apparently propelled of

an acute sense of helplessness in view of the loss of a young son. Having regard to the fact that the appellants were young persons in the age group of 18 to 19 years and the injured himself was also a young student of 18 years and that the occurrence took place in the year 1992, as also the fact that the young men would now be fairly well entrenched in life, no useful purpose would be served by sending them to serve the remaining sentence at this stage, more so when the providence has already played its part by depriving the injured of his life. Considering all these facts together, I deem it appropriate to reduce the sentence of the appellants to that of already undergone, provided they deposit a sum of Rs.50,000/- to be paid to the father of the deceased-Abhay Singh as compensation. Ordered accordingly. The aforesaid amount shall be deposited by the appellants in the trial Court within a period of three months from today. Thereafter, the trial Court shall disburse the same to the father of the deceased and in the event of his not being there, to the other heirs after determining the identity. In the failure of the appellants not depositing the aforesaid amount within the stipulated period, the sentence so awarded by the trial Court shall endure.

The appeal is disposed of in the above terms.

April 25 ,2007 (Mahesh Grover)
"SCM" Judge